IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

C.R.P.No. 858 of 1999(G)

AGAINST THE ORDER DATED 27/01/1999 IN EA 1037/77 IN EP 6/75 IN OS.382/1970 of ADDL.MUNSIFF COURT, KOLLAM

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REVN. PETITIONER/ RESPONDENT/JUDGMENT DEBTOR/PETITIONER:

M.RAMAN PILLAI, SREEDEVI VILASOM VEEDU,
VELLIMON, CHIRAMOOTTIL CHERRY,
PERINAD VILLAGE, KOLLAM DISTRICT.
(* EXPIRED LH IMPLEADED)

* ADDITIONAL REVISION PETITIONER NO.2

C. PADMAVATHY AMMA
D/o. RAMAN PILLAI.M.
SREEDEVI VILASOM VEEDU,
VELLIMON, CHIRAMCOTTIL CHERRY,
PERINAD VILLAG, KOLLAM DISTRICT.
* (ADDIITONAL REVISION PETITIONER NO.2 IS IMPLEADED AS THE LH OF THE DECASED PETITIONER VIDE ORDER DATED 22/01/2002 IN C.M.P.No.409 OF 2002)

BY ADV. SMT.V.P.SEEMANDINI
SRI.T.R.RAJESH
SRI.P.S.DIVAKARAN

RESPONDENTS/PERTITIONERS/DECREE HOLDER& LEGAL REPRESENTATIVES OF THE DECREE HOLDER:

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1. A. SIVARAMAN PILLAI, UDANAZHIKATHU VEEDU,
   PERUMON KIZHAKKECHERRY, PERINAD,
   KOLLAM DISTRICT. (DIED)

2. K. PANKAJAKSHI AMMA, UDANAZHIKATHU VEEDU,
   PERUMON KIZHAKKE CHERRY, PERINAD.

3. P. SANTHAKUMARI AMMA, UDANAZHIKATHU VEEDU,
   PERUMON KIZHAKKE CHERRY, PERINAD.

4. SIVARAMA PILLAI CHANDRASEKHARAN PILLAI,
   UDANAZHIKATH VEEDU, PERUMON KIZHAKKE CHERRY, PERINAD.

5. PANKAJAKSHI AMMA ANANDABAI AMMA,
   UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
   PERINAD.

6. SIVARAMA PILLAI RAJENDRAN PILLAI,
   UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
   PERINAD.

7. PANKAJAKSHY AMMA THANKAMANI AMMA,
   UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
   PERINAD.

8. PANKAJAKSHY AMMA LEKSHMIKUTTY AMMA,
   UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
   PERINAD.

9. PANKAJAKSHY AMMA PADMINI AMMA,
   UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
   PERINAD.

10. SIVARAMA PILLAI UNNIKRISHNA PILLAI,
    UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
    PERINAD.

11. PANKAJAKSHI AMMA RAJESWARI AMMA,
    UDANAZHIKATHU VEEDU, PERUMON KIZHAKKE CHERRY,
    PERINAD.

BY ADV. SRI.P.B.SURESH KUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/03/2007, ALONG WITH CRP NO. 2214 OF 1999, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.1853 OF 1999 IN C.R.P.NO.858 OF 1999

DISMISSED.

22.03.2007 Sd/- M.N.KRISHNAN,JUDGE

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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C.R.P.No.858 OF 1999

AND

C.R.P.No.2214 OF 1999

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Dated this the 22nd day of March,2007

ORDER

At the outset I would like to point out the litigation has a long history from 1970. The decree holder obtained a decree against the judgment debtor for an amount of Rs.1,724/- and there after brought the property having an extent of 30 cents to sale. The decree holder purchased the property and thereafter the sale was confirmed and the application filed by the judgment debtor to set aside the sale was dismissed and it has become final.

2. Meanwhile, the judgment debtor moved an application under Act 17 of 1977 contending that his annual income is less than Rs.3,000/- and his debt also does not exceed Rs. 3,000/- and therefore, he is entitled the benefit of Act 17 of 1977 and so it should be declared that the debt has been discharged as enumerated under the provisions of Act 17 of 1977. The said application was dismissed against which, C.R.P.1903/81 was filed. During the pendency of the Civil Revision Petition, as per Civil Miscellaneous Petition 2284 of 1982, this court had granted stay of execution proceedings on condition of the deposit of entire decree amount and it is submitted

that the amount of Rs.1,800/- was deposited on 12.2.1982. Ultimately in the C.R.P, order passed by the Execution Court was set aside and the matter was remitted back to the Munsiff court for considering the question of the availability of the benefit to the judgment debtor of the benefits of Act 17 of 77. The trial court on consideration of the entire materials, held that the judgment debtor was having the liability of more than Rs.3,000/- and that he was also having an income of more than Rs.3,000/- and therefore he does not come within the purview of the definition of a debtor under Act 17 of 1977 and therefore dismissed the application. After dismissing the said application, since the sale has been confirmed, the trial court recorded full satisfaction of the decree and closed the E.P. It is against the said findings the civil revision petition is filed.

3. The learned counsel for the revision petitioner strongly contends that during the pendency of the civil revision petition there was an order by this Court to stay the execution on deposit of the entire decree amount with a liberty to withdraw the entire amount by the decree holder. Since, the amount was deposited as per the order of this court and as the said fact has not been taken note of by the court, the order suffers from illegality which requires interference at the hands of this Court. At the outset it has to be stated that the civil

revision petition was filed against the order of the execution court on a finding that the judgment debtor was not entitled to the benefits of Act 17 of 1977. It is in that proceeding an order was made by this Court. The records and the submission make it clear that prior to the filing of this application, the sale had taken place and it has been confirmed and further the application to set aside the sale under order 21 Rule 90 of the C.P.C. has been dismissed. So the order to be understood in the following words ie., if the judgment debtor is able to establish that he is entitled to the benefit of Act 17 of 1977 then irrespective of the factum of the sale of the property the debt has to be declared as discharged and therefore there cannot be any proceedings against the property of the judgment debtor. Otherwise, it will not be proper to construe after confirming the sale and dismissing the application for setting aside the sale, this Court has ordered stay of other proceedings. It has also to be clearly stated that the sale as well as the application to set aside the sale had taken place much prior to the application filed for getting the benefits of Act 17 of 1977. Therefore, the said contention of the learned counsel for the revision petitioner that just because amount is deposited, it will not automatically give opportunity to the judgment debtor as if the sale is set aside. Therefore, the said contention is rejected.

4. Next point to be considered is regarding the correctness of the finding of the execution court E.A.1037/1977. PWs 1 to 5 were examined by the decree holder in the case. The present decree debt comes to Rs.1,724/- and he has also produced Ext.A3, a copy of decree 588/1973 of which the principal amount comes to Rs.1,224/-and trial court have found that the liability of the revision petitioner is Rs.3448/- on the date of the commencement of the Act. The learned counsel for the revision petitioner submits before me that the revision petitioner had discharged that debt, but, unfortunately no evidence is produced in this case. The decree holder has been examined as PW5 and nothing has been elicited at the time of cross examination regarding the satisfaction of the decree debt. The Execution Court had elaborately considered the other documentary evidence. There was a partition deed effected in the family, in the year 1972 even with respect to the self acquired properties. He has reserved life interest in his property with a right to take income together with his wife. A commissioner was appointed in the matter and he had inspect the property and found that the properties are really valuable and there are high yielding coconut trees. Besides this DW1 the judgment debtor has 60 cents of landed properties with coconut trees which were capable of giving income. So on the basis of Exts .A1 and

A2 and the report of commissioner Ext.C1 and the testimony of the decree holder's witness, the executing court came to the correct conclusion that the judgment debtor is not entitled to the benefit of Act 17 of 1977. I do not find any illegality or irregularity committed by the court below in passing such an order and it does not call for any interference. Therefore, the civil revision petition 858/1999 lacks merits and dismissed.

So far as C.R.P. 2240/1999 is concerned on dismissal of the Execution Application 1037 of 1977 the parties revert back to the first stage and at that stage the property has been sold in auction and sale has been confirmed and therefore, the decree is satisfied by sale of the property. Hence, full satisfaction is recorded and E.P is closed. This is what the Execution Court has precisely done there and, I do not find any illegality or irregularity. Therefore, both the Civil Revision Petitions lack merit and are dismissed without any order as to costs.

M.N.KRISHNAN,JUDGE

dvs